

Appln. No. 10/065,461
Docket No. 126800/GEN-0342

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REMARKS / ARGUMENTS

Status of Claims

Claims 1-19 are pending in the application. Claims 1, 3-6, 8-14 and 19 stand rejected. Claims 15-17 are allowed. Claims 2, 7 and 18 are objected to as being dependent upon a rejected claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant appreciates the Examiner's notation of the allowable claims. Applicant has amended Claims 1, 13 and 19, and has added new Claim 20, leaving Claims 1-20 for consideration upon entry of the present Amendment.

Applicant respectfully submits that the rejections under 35 U.S.C. §102(b) and 35 U.S.C. §103(a) have been traversed, that no new matter has been entered, and that the application is in condition for allowance.

Rejections Under 35 U.S.C. §102(b)

Claims 1, 3-6 and 8-14 stand rejected under 35 U.S.C. §102(b) as being anticipated by Sheppard et al. (U.S. Patent No. 5,739,594, hereinafter Sheppard).

Applicant traverses this rejection for the following reasons.

Applicant respectfully submits that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, *in a single prior art reference.*” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). Moreover, “[t]he identical invention must be shown in as complete detail as is contained in the *** claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Furthermore, the single source must disclose all of the claimed elements “arranged as in the claim.” *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984). Missing elements may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference.

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Titanium Metals Corp. v. Banner, 778 F.2d 775, 780, 227 U.S.P.Q. 773, 777 (Fed. Cir. 1985).

At the outset, Applicant notes that the Examiner essentially maintains the rejection of the office action dated May 30, 2006, with additional commentary. In the final office action dated November 7, 2006, the Examiner comments: "Applicants' arguments have been noted. However, Examiner respectfully disagrees and asserts the interpretation of Sheppard's *teaching* of TIMER 1 and TIMER 2 as depicted in Fig. 5B to correspond the disputed limitation is proper. A careful review of the claims Examiner *finds no specific definition for the disputed term in the claims* to exclude it from Examiner's broadest, *reasonable interpretation* of the Sheppard's *teaching*. Therefore, any of the Applicants' above interpretations of Sheppard *teaching* is applicable to the disputed claimed limitation '*nested within*'." Paper No. 20061102, pages 8-9 (emphasis added).

First, it appears to Applicant that the Examiner is applying obviousness rules to reject the instant claims for reasons relating to anticipation. For example, it appears that the Examiner does not specifically find in Sheppard each and every element of the claimed invention *arranged as claimed*, but instead *interprets* Sheppard to provide such a *teaching* for the second timer being *nested within* the first timer. As such, Applicant submits that a *prima facie* case of anticipation has not been established.

Second, Applicant respectfully disagrees with the Examiner where the Examiner comments that there is no specific definition for the disputed term in the claims. From the very claim language itself, that is, "said second time delay is nested *within* said first time delay", Applicant submits that "*nested within*" means exactly what it states, that some portion of the second time delay must occur (be nested) inside (within) the first time delay. As such, Applicant submits that the claim language itself clearly defines the claimed invention to require that some portion of the second time delay (a second window of time) must occur *inside* the first time delay (a first window of time).

In rejecting the claimed invention, the Examiner references Sheppard Fig. 5B for support of the disputed limitation "*nested within*". However, in comparing Sheppard Fig.

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5B with the claimed invention, Applicant does not find any portion of Sheppard TIMER 2 to be "nested within" TIMER 1. In addition to Applicant's prior comments (Response paper dated August 28, 2006, pages 9-11) regarding this deficiency, Applicant further submits that Sheppard Fig. 5B clearly illustrates TIMER 1 having initialization (step 240), process block (step 244), time-out decision (step 242), and repeat loop ("NO" path), and TIMER 2 having initialization (step 248), process blocks (steps 250 and 252), time-out decision (step shown between step 252 and 254), and repeat loop ("NO" path), and does not show any portion of TIMER 2 (from step 248 to associated "NO" path) being nested *within* TIMER 1 (from step 240 to associated "NO" path).

Even after further review of Sheppard Fig. 5B following the Examiner's remarks in the final office action, Applicant still finds TIMER 2 to initialize, time-out, and repeat, in a do-loop that is entirely separate from the initialize, time-out, and repeat do-loop of TIMER 1, and respectfully submits that the Examiner has not provided any further clarification as to how Sheppard TIMER 2 can conceivably be shown (anticipated) to be *nested within* TIMER 1.

As such, and in view of the foregoing, Applicant respectfully submits that Sheppard does not disclose each and every element of the claimed invention arranged as claimed, and therefore cannot be anticipatory.

Notwithstanding the foregoing, and without prejudicial admission contrary to Applicant's prior comments and arguments, Applicant has nonetheless amended Claims 1 and 13 in an effort to further this application to allowance.

As such, Claims 1 and 13 now recite, *inter alia*,

"...initiation of said second time delay is nested within said first time delay."

No new matter has been added by these amendments as antecedent support may be found in the specification as originally filed, such as in allowed Claim 15, for example.

Dependent claims inherit all of the limitations of the respective parent claim.

In comparing Sheppard with the claimed invention, Applicant submits that Sheppard TIMER 2 does not have an *initiation* step (Sheppard Fig. 5B step 248) that is *nested within* the first time delay (between step 240, step 242 and the associated "NO"

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path of TIMER 1). Since Applicant has already set forth above, and in Applicant's prior response paper dated August 28, 2006, arguments outlining the substantial difference between Applicant's invention and Sheppard (with regard to TIMER 1 and TIMER 2 in Fig. 5B), Applicant elects to avoid repetition of the same, while reserving the right to incorporate the same herein by reference.

In addition to all of the foregoing, even if Applicant were to accept that Sheppard could be modified to place the initiation of TIMER 2 inside (nested within) TIMER 1, Applicant respectfully submits that such a modification would render Sheppard unacceptable for its intended purpose, as Sheppard Fig. 5B clearly shows the initiation of TIMER 2 occurring after TIMER 1 has timed out, and such a modification would substantially change the logic flow of Sheppard contrary to its intended purpose (waiting for TIMER 1 to time out before initiating TIMER 2).

In view of all of the foregoing, Applicant submits that Sheppard does not disclose each and every element of the claimed invention arranged as claimed and therefore cannot be anticipatory. Accordingly, Applicant respectfully submits that the Examiner's rejection under 35 U.S.C. §102(b) has been traversed, and requests that the Examiner reconsider and withdraw of this rejection.

Rejections Under 35 U.S.C. §103(a)

Claim 19 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sheppard.

Applicant traverses these rejections for the following reasons.

Applicant respectfully submits that the obviousness rejection based on the References is improper as the References fail to teach or suggest each and every element of the instant invention in such a manner as to perform as the claimed invention performs. For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). The Examiner must meet the burden of establishing that all elements of the invention are taught or suggested in the prior art. MPEP §2143.03.

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Additionally, Applicant respectfully submits that obviousness cannot be supported by a proposed modification that would render the prior art invention being modified unsatisfactory for its intended purpose. *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984); MPEP §2143.01.

The Examiner acknowledges that Sheppard is deficient in anticipating the claimed invention, and looks to knowledge of one skilled in the art to cure these deficiencies.

At the outset, Applicant submits that obviousness cannot be supported by a modification that would render the prior art being modified unsatisfactory for its intended purpose. Here, if Applicant were to accept the Examiner's modification of Sheppard to include a third time delay nested within the first time delay, in addition to the second time delay being nested within the first time delay, Applicant submits that such a modification would render Sheppard unsatisfactory for its intended purpose, as Sheppard Fig. 5B clearly shows the initiation of TIMER 2 occurring after TIMER 1 has timed out, and such a modification would substantially change the logic flow of Sheppard contrary to its intended purpose (waiting for TIMER 1 to time out before initiating TIMER 2), not to mention how the logic flow would substantially change with the introduction of a third timer (TIMER 3) nested within the first timer (TIMER 1) of Sheppard. In respectful disagreement with the Examiner, Applicant submits that the Examiner has not shown how the modified Sheppard would still be acceptable for its original intended purpose, and therefore has not established a *prima facie* case of obviousness.

While Applicant respectfully disagrees that the Examiner has met the burden of showing a *prima facie* case of obviousness (obviousness cannot be supported by a modification that would render the prior art being modified unsatisfactory for its intended purpose), Applicant has nonetheless amended the claimed invention, without any prejudicial intent regarding traversal of any prior art, in an effort to advance this case to issue.

Claim 19 now recites, *inter alia*:

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“...a plurality of timers configured to provide a first time delay, a second time delay and a third time delay, wherein initiation of said second time delay and initiation of said third time delay are nested within said first time delay...”

No new matter has been added, as antecedent support can be found in the application as originally filed, such as at Paragraph [0027] and at Figure 3, for example.

Dependent claims inherit all of the limitations of the respective parent claim and any intervening claim.

In view of Applicant’s remarks and arguments set forth above regarding the deficiency of Sheppard to disclose, teach or suggest the initiation of TIMER 2 being nested within TIMER 1, Applicant further submits that Sheppard also fails to disclose, teach or suggest the initiation of a third time delay being nested within the first time delay.

In view of the foregoing, Applicant submits that Sheppard fails to teach or suggest each and every element of the claimed invention and is therefore wholly inadequate in its teaching of the claimed invention as a whole, fails to motivate one skilled in the art to do what the patent Applicant has done, fails to offer any reasonable expectation of success in combining the References to perform as the claimed invention performs, fails to teach a modification to prior art that does not render the prior art being modified unsatisfactory for its intended purpose, and discloses a substantially different invention from the claimed invention, and therefore cannot properly be used to establish a *prima facie* case of obviousness. Accordingly, Applicant respectfully requests reconsideration and withdrawal of all rejections under 35 U.S.C. §103(a), which Applicant considers to be traversed.

In light of the foregoing remarks and amendments, Applicant respectfully submits that the Examiner’s rejections under 35 U.S.C. §102(b) and 35 U.S.C. §103(a) have been traversed, and that the application is now in condition for allowance. Such action is therefore respectfully requested.

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Regarding New Claim 20

Applicant has added new Claim 20 to capture originally disclosed but unclaimed subject matter. No new matter has been added as antecedent support can be found in the application as originally filed, such as at Paragraph [0027] and at Figure 3, for example. Applicant submits that Claim 20 is patentable at least for the reason that it depends from an allowable claim, and respectfully requests notice thereof.

If a communication with Applicant's Attorneys would assist in advancing this case to allowance, the Examiner is cordially invited to contact the undersigned so that any such issues may be promptly resolved.

The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 06-1130.

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In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above-identified Deposit Account.

Respectfully submitted,

CANTOR COLBURN LLP

Applicant's Attorneys

By: 

David Arnold
Registration No: 48,894
Customer No. 23413

Address: 55 Griffin Road South, Bloomfield, Connecticut 06002
Telephone: (860) 286-2929
Fax: (860) 286-0115